

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

UNITED STATES OF AMERICA

VS.

CRIMINAL ACTION NO.: 3:99-CR-154BN

SHAWN BURTON

OPINION AND ORDER

Before the Court is the Motion of Petitioner Shawn Burton for Resentencing Pursuant to 29 U.S.C. §§ 2255 and 2253 COA, filed May 17, 2005.¹ Petitioner argues that his constitutional rights under the Fifth and Sixth Amendments to the Constitution of the United States of America were violated. Petitioner specifically argues that when imposing his sentence, the Court utilized the Sentencing Guidelines in violation of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), *Blakely v. Washington*, 124 S.Ct. 21 (2004), *United States v. Booker*, 125 S.Ct. 738 (2005), and *United States v. Fan Fan*, 125 S.Ct. 738 (2005). Petitioner further argues his criminal history was improperly calculated.

Petitioner's Motion is not well taken and it should be denied. First, Petitioner has already filed a Motion for Relief Pursuant to § 2255. The Court denied that Motion on September 13, 2002. Petitioner must obtain certification from the appropriate Court of Appeals of the United States before he may pursue a second or

¹The Motion is the second entry under docket entry no. 83. It is likely for this reason that it is not recognized as an outstanding motion by the electronic filing system of the Court.

successive habeas corpus petition. Second, the cases which petitioner cites, e.g., *Booker*, do not provide Petitioner with a basis on which to attack his sentence. In *In re Elwood*, 2005 WL 976998 (5th Cir. 2005), the Court of Appeals of the United States for the Fifth Circuit explicitly refused to apply *Booker* retroactively. Thus, *Booker* does not provide Petitioner with a means by which to be re-sentenced.

IT IS THEREFORE ORDERED that the Motion of Petitioner for Resentencing [83] is not well taken and is hereby denied.

SO ORDERED this the 21st day of July, 2005.

s/ William H. Barbour, Jr.
UNITED STATES DISTRICT JUDGE